

# **AN INSURANCE GUIDE FOR NONPROFIT ORGANIZATIONS**

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## **I. INTRODUCTION**

This insurance handbook will help nonprofit organizations navigating through a labyrinth of insurance issues.

The nonprofit sector is an essential one, providing goods and services that are vital to the health and welfare of the state's citizens. The Office of the Insurance Commissioner recognizes these invaluable contributions.

Washington state has more than 32,000 nonprofit organizations. They employ more than 158,000 individuals with an annual wage of approximately \$4 billion! As such, nonprofits represent about 7 percent of the state's nonagricultural labor force. Were nonprofits combined as a commercial enterprise, they would be an employer on the same scale as the Boeing Corporation!

In addition, many of the cultural and philanthropic pursuits of nonprofits are the very things that attract other business enterprises and highly skilled and educated workers to Washington state.

The nonprofit sector plays a vital and increasingly important role in the lives of residents throughout Washington state.

The Office of the Insurance Commissioner offers this publication to help nonprofits better understand the insurance risks they confront. In so doing, nonprofits can continue to provide client services without needlessly jeopardizing their organization's with information for consumers s philanthropic assets.

## **II. COMMON INSURANCE MYTHS ABOUT NONPROFITS**

It's important to remember that the possibility of being sued and the possibility of being found liable are two completely *different* things! Here are some of the myths that nonprofits often accept about insurance, even though the facts may be quite different.

**Myth No. 1:** *Nonprofits can't be sued because of charitable immunity.*

**FACT:** The concept of charitable immunity is based upon the notion that charitable organizations and individuals should be exempt from legal liability while giving selflessly to better their communities. Originally based upon an 1861 English court case, the doctrine of charitable immunity has faded over time. Today, according to the Nonprofit Risk Management Center, the concept of charitable immunity has gone the way of the dinosaur.

**Myth No. 2:** *State laws protect charitable organizations against the threat of lawsuits.*

**FACT:** Today only three states (Alabama in 1991 and Delaware and Colorado in 1992) have adopted model statutes to provide liability protection to all volunteers (not just directors and officers) working for charitable organizations. Washington has not adopted this model.

**Myth No. 3:** *The only insurance policy nonprofits need to purchase is a general liability policy.*

**FACT:** A general liability policy only covers basic exposures, such as premises and operations, even the organization's officers may not be protected under a stand-alone general liability policy.

**Myth No. 4:** *Our Directors & Officers (D&O) policy will protect us against any employment-related lawsuits.*

**FACT:** The coverage provided under many D&O policies can be very limited, with extensive lists of exclusions. D&O policies also do not protect against most employment-related lawsuits.

**Myth No. 5:** *If a charitable or nonprofit organization must purchase insurance, the organization should just try to purchase the lowest priced policy possible.*

**FACT:** Absolutely wrong. An organization should determine its potential exposure to loss and then get coverage appropriate for that exposure. Buying a policy that doesn't fit your needs is no bargain.

### **III. RISK MANAGEMENT STRATEGIES**

If you don't have a risk management program, ask your organization's insurance company, agent or broker to provide one.

The purpose of a risk management program is just that, to manage risk. Insurance professionals can assist you in avoiding or modifying those activities which expose you or your organization to potential lawsuits, while insuring against those risks that the organization must bear in order to achieve its mission, goals and objectives.

A risk management program does not eliminate the need for insurance. Ideally, your organization only needs to purchase insurance protection against those risks that cannot be avoided through prudent risk management.

A good risk management program will:

1. Increase the likelihood your organization will be viewed as a "good risk " by insurers.
2. Let you select only those coverages you need at an affordable price.

Where to start? Consider all of your organization 's resources (staff, property, financial capital, etc.) and all of your organization 's activities. Now think of everything that can go wrong! This exercise should give you a pretty good idea of the many types of risks your organization can face.

Here is an extensive -- but by no means exhaustive -- list of typical insurance risks a nonprofit may encounter.

#### **RISKS POSED BY INDIVIDUALS:**

- Disgruntled or terminated employees.
- Employees who were victims of sexual or other types of harassment.
- Employees who faced discrimination.
- Non-payroll: A wide variety of other people may pose insurance risks to your organization in certain circumstances: Clients, members of the public, vendors who visit your premises, donors and volunteers.
- Your organization also may find itself at odds with public agencies and the Attorney General.

#### **RISKS POSED BY CERTAIN ACTIVITIES:**

- Activities in which volunteers are injured while performing assigned duties.
- Neighborhood Watches may be liable if they improperly interfere with law-abiding citizens.
- An auto accident that occurs as a volunteer is doing work for the nonprofit.
- Fundraising events. For example, an inebriated wine-tasting participant may cause damage or injury.

Once the various types of risks have been defined, you will have a better grasp of the type of insurance coverage your organization needs. Volunteers pose special risk issues. If your organization utilizes volunteers, be sure your insurance professional is someone familiar with, or specializing in, volunteer programs. Without this expertise, you will be less likely to obtain the optimal package of insurance options.

### **IV. PURCHASING INSURANCE**

#### **QUESTION: Is insurance difficult to find?**

No, but the process is sometimes confusing. Purchasing insurance coverage for nonprofit organizations can be complicated and require the assistance of professional agents and brokers. In addition, the nonprofit market is highly specialized. Not all companies will have the requisite experience and expertise your organization desires. Be sure your insurance professional does.

#### **QUESTION: Is insurance available for my nonprofit organization?**

Yes. This is a competitive marketplace and coverage is available. Here are some examples of the many types of charitable organizations that are eligible for coverage.

#### **Human Service Organizations**

Food banks

Meals on Wheels

Crisis Intervention and Counseling Services

Youth Programs  
Family Counseling Centers  
Family Social Services  
Homes for Abused Women and Children  
Group Homes  
Community Centers  
Emergency Shelters  
Animal shelters

### **The Arts**

Actor and Theater Groups  
Art Galleries  
Museums  
Symphony/Orchestra Organizations

### **Health Care**

Research Labs  
Outpatient Clinics  
Nonprofit Hospitals, clinics, etc.

### **Education**

Head Start programs  
Preschools  
Elementary Schools  
Special Education Schools  
Adult/Vocational and Job Training Programs  
Seminaries

### **Others**

#### **Religious**

#### **Social**

#### **Civic**

**And many more.**

### **QUESTION: How do I know what we need?**

The answer is not always easy. You need to shop around. Each organization is unique, with different needs and financial constraints.

The object is to purchase the right amount and type of insurance at the lowest possible price. The premiums your insurance company will charge are based largely upon the company's administrative expenses and their expected claims. Those expectations will in turn be affected by prior experience. Premiums will also fluctuate along with changes in the economy, as well as with cyclical upswings and downswings in the insurance market.

A wide variety and scope of insurance services are available, and a broad range of premiums is charged for these services. Remember that your insurance professional works for you. Approach the problem of purchasing insurance the same way you would approach any other problem faced by your organization. In other words, put the needs of the organization first. Get quotations from different companies. Continue to get quotations until you "re reasonably certain you have sampled the range of options and prices available. That way you can feel sure that you "re getting the maximum value for your insurance dollar.

### **QUESTION: What if I live in a small community, and the agent or broker I am dealing with doesn "t represent a company which specializes in nonprofit organizations?**

Ideally, insurance professionals represent companies that specialize in insuring nonprofit organizations. But sometimes that is not possible.

Here are some national resources an agent or broker can use if he or she needs to collect more information. These national nonprofit insurance groups represent companies that specialize in nonprofit coverage. They may be able to help a local agent or broker get you the insurance protection you need.

Some of these national program resources include:

**Black/White Associates: 510-465-5773**

**Charity First: 415-536-8560**

**Insurance Brokers & Agents (IBA) of the West: 206-467-7354**

## **V. A SHOPPER'S GUIDE**

**1. Shop around.** Compare policies. Get price quotes.

**2. Try to compare apples with apples, oranges with oranges.** For example, if you need to purchase a general liability policy, compare the policy you're considering to other general liability policies offering the same coverage.

**3. Consider what losses are covered. But also consider what losses are specifically excluded.** If your organization is mostly field staff conducting door-to-door activities, a less expensive policy that does not protect against off-premises liability may be of little value. In this case, a more expensive policy may be justified because it includes the coverage you want.

**4. Select the coverage most clearly tailored to meet your group's needs.** If your organization is made up largely of volunteers, a policy specifically designed for volunteer programs may be of greater value than a more generic policy that may at first appear the better buy. In fact, your organization probably will need more than one policy (including worker compensation coverage) in order to acquire full insurance protection.

## **VI. CONSUMER ASSISTANCE**

Your insurance professional should be able to assist you with many of your insurance needs. In addition, the Office of the Insurance Commissioner has insurance compliance officers to assist you in the Consumer Advocacy and Outreach Division.

You can call them toll-free from anyplace in Washington state. Their number is: **1-800-562-6900**

The Consumer Outreach and Advocacy Division also distributes information to assist consumers and members of the public to help them make informed decisions about insurance.

This division also identifies emerging areas of concern for consumers. It proposes legislative initiatives and administrative remedies for problems faced by the consumer, and it strives to advance the interests of the consumer and the general public.

## **VII. LEGAL PROTECTION**

For those organizations who want to learn more about their liability under the law, articles of incorporation, and other legal issues, here is a directory of the current statutes that pertain to nonprofit organizations in Washington State:

### **Revised Code of Washington**

#### **4.24.264 Boards of directors or officers of nonprofit corporations-Liability-Limitations.**

(1) Except as provided in subsection (2) of this section, a member of the board of directors or an officer of any nonprofit corporation is not individually liable for any discretionary decision or failure to make a discretionary

decision within his or her official capacity as director or officer unless the decision or failure to decide constitutes gross negligence.

(2) Nothing in this section shall limit or modify in any manner the duties or liabilities of a director or officer of a corporation to the corporation or the corporations 's members.

**RCW 24.03.015:** In addition, corporations may be set up as either charitable or benevolent organizations in Washington State under Title 24, RCW 24.03.015.

The liability of any director of a nonprofit corporation as defined under RCW 24.03.015 may be limited according to the provisions appearing under RCW 24.03.025(4)(c).

**RCW 24.03.025 Articles of incorporation.**

...(4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including provisions regarding:

...c) Eliminating or limiting the personal liability of a director to the corporation or its members, if any, for monetary damages for conduct as a director: PROVIDED, That such provision shall not eliminate or limit the liability of a director for acts or omissions that involve intentional misconduct by a director or a knowing violation of law by a director, or for any transaction from which the director will personally receive a benefit in money, property, or services to which the director is not legally entitled. No such provision may eliminate or limit the liability of a director for any act or omission occurring before the date when such provision becomes effective....

## **VIII. A NONPROFIT GLOSSARY**

**Directors and Officers (D&O) policies:**

D&O policies are purchased in order to protect both the organization and its directors and officers. Many of these policies offer only limited protection for the organization. But if they are selected carefully, they can supplement the indemnification protection appearing in the nonprofit's articles of incorporation.

**Derivative actions:**

If an action is brought against a board member on behalf of the organization itself, as opposed to a third party action, (see third party liability of board members), this is referred to as a derivative action. Although rare, derivative actions occur when a lawsuit is brought against a board member by the State Attorney General, another board member, or other members of the nonprofit organization.

**Endorsement (Insurance):**

Endorsements are modifications of an existing insurance contract or policy. A nonprofit organization may have to add these provisions or modifications to an existing policy to ensure the coverage is tailored to meet peculiar circumstances or needs.

**General Liability Insurance:**

Policies that provide basic liability protection. Subject to exclusions and limitations, coverage usually applies for legal responsibility for bodily injury and property damage losses arising from the premises, operations in progress, products and completed operations. Other coverages may be included depending on the particular policy form.

**Indemnification:**

Where permitted by state law and its bylaws, an organization can promise to reimburse board members for legal costs they incur. Even when a nonprofit corporation has established extensive bylaws consistent with prevailing state law to indemnify its officers, the value of this protection is limited by the financial resources at the organization 's disposal. Paltry financial resources frequently necessitate the purchase of supplemental insurance protection.

**Third-party liability of board members:**

Board members are considered liable to third parties when:

- Board members knowingly participated in wrong doing.
- The nonprofit organization acted outside of, or in someway inconsistent with, its bonafide status as a nonprofit organization.

- Board members had either *reason to know* of wrongdoing or were *negligent in not knowing* of wrongdoing by the organization.

#### **Tort:**

A "tort" is a private or civil action, not a criminal act. Generally, an action in tort involves a violation of a duty imposed by law upon persons having a legal relation to each other involved in a particular transaction. There is no action in tort if there is no resulting economic loss.

- There must always be a violation of some duty owed one party to the other, and the duty must arise by operation of law and not merely by agreement of the parties or contract.
- Elements of a tort action: (1) existence of a legal duty between the parties; (2) a breach of that duty; and (3) damages proximately resulting from that breach. All elements must be proved.

## **IX. A RESOURCE GUIDE**

- **Am I Covered For ...? A Guide to Insurance for Nonprofit Organizations**  
Consortium for Human Services Inc  
P.O. Box 1183  
San Jose, California 95108
- **D&O...Yes or No: Directors and Officers Insurance for the Volunteer Board**  
Charles Tremper, Nonprofit Risk Management Center  
1001 Connecticut Ave., NW, Suite 900  
Washington, D.C. 20036  
202-785-3891 fax 202-833-5747
- **Guidebook for Directors of Nonprofit Corporations**  
George W. Overton, Editor  
Prepared by The Legal Guidebook For Directors Subcommittee and Nonprofit Corporations Publications  
Planning and Marketing  
American Bar Association  
750 North Lake Shore Drive  
Chicago, Illinois 60611
- **Managing Legal Liability and Insurance for Corporate Volunteer Programs**  
Charles Tremper and Jeffrey D. Kahn  
National Center for Community Risk Management and Insurance  
1828 L Street, NW, Suite 505  
Washington, D.C. 20036
- **No Surprises, Controlling Risks in Volunteer Programs**  
**Charles Tremper and Gwynne Kostin**  
Nonprofit Risk Management Center  
(in cooperation with the American Bar Association Points of Light Foundation)  
Nonprofit Risk Management Center  
1001 Connecticut Avenue, NW Suite 900  
Washington, D.C. 20036 (202) 785-3891
- **Nonprofit Policy Agenda Project for Washington State, Condensed Report, June, 1995**  
Sandy Gill  
Northwest Nonprofit Resources  
525 East Mission Avenue  
Spokane, Washington 99202  
509-484-6733 Fax 509-483-0345, e-mail: sgill@iea.com (With Support from The Union Institute and Northwest Regional Facilitators)
- **The Nonprofit Policy Agenda**  
**Recommendations for State and Local Action**  
The Union Institute/May 1992

The Union Institute Office for Social Responsibility Center for Public Policy  
1731 Connecticut Avenue, NW, Washington, D.C. 20009-1146, 202-667-1313

- **Nonprofits and the Property/Casualty Insurance Market: A Practical Assessment**  
Prepared for the Ford Foundation by Pamela Davis, Submitted June 1995  
Northwest Nonprofit  
Published bimonthly for the Northwest "s nonprofit community by Northwest Nonprofit Resources  
525 East Mission Avenue  
Spokane, Washington 99202-1824  
509-484-6733 Fax 509-483-0345  
Internet address: sgill@iea.com (See Northwest Nonprofit, July/August 1995, Volume 3, Number 4)
- **State Liability Laws for Charitable Organizations and Volunteers**  
Prepared by the Nonprofit Risk Management Center  
1001 Connecticut Avenue NW Suite 900  
Washington, D.C. 20036
- **Office of the Insurance Commissioner**  
Consumer Advocacy & Outreach Division  
1-800-562-6900

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